IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO.2960 OF 2006

IN

SUMMONS FOR JUDGMENT NO.707 OF 2003

IN

SUMMARY SUIT NO.1068 OF 2003

Godrej & Boyce Manufacturing Co.Ltd. ... Plaintiff.

vs.

Kikani Manufacturing Co. & others. ...Defendants.

Mr.H.Toor with Mr.K.D.Mehta i/b. Payne & Co. for Plaintiff.

Mr.Y.R.Shah, for Defendants in support.

CORAM: D.K.DESHMUKH,J.

DATED: 12th October,2006

P.C.:-

1. This is a notice of motion taken out by the defendants under Rule IV of Order XXXVII for setting aside the decree passed in summary suit. According to the defendants on being served with the writ of summons they had engaged lawyer, that lawyer had filed vakalatnama, but the lawyer did not inform them about the progress in

the matter, though they were repeatedly making inquiry whether the summons for judgment has been taken out?. With the result, they could not file their reply and application for leave to defend, as a result of which decree came to be passed. The allegations made against the lawyer that the defendants have done everything which is expected of them, but the lawyer did not perform his duties, is extremely serious allegations to be made against any lawyer. Such an allegations has been made against the lawyer who has been named in this petition. But this allegation has been made by the defendants without making even an attempt to verify from the lawyer as to why he did not appear before the court, why he did not file reply in the summons for judgment. What is surprising is that according to the defendants after they came to know that the decree was passed against them they did not contact their lawyer who according to them was engaged by them, but they instead engaged some other lawyer. What is more surprising is that the lawyer now engaged by the defendants without making any attempt to contact that lawyer to verify whether the serious allegations that defendants are making against the lawyer are really correct or not, has taken out this notice of motion. Neither before taking out this notice of motion nor after taking out this notice of motion any notice was given to that lawyer stating that serious allegations are made against that lawyer. To this notice of motion also that lawyer has not been joined as a party. The only special circumstance for setting aside

the decree that is pointed out is alleged negligence of the lawyer. It is obvious that only if these serious allegations made against the lawyer are accepted by the Court, the order can be set aside. In my opinion, it is impossible to accept such serious allegations against a professional like lawyer without given him an opportunity of being heard in the matter The defendants, it appears, do not want that such an opportunity to meet the allegations should be given to the lawyer. Otherwise before making such allegations, the defendants would have given notice to him so that the lawyer could have explained his conduct. They could have served with him a copy of the affidavit with the notice that they are filing affidavit before the Court so that if the lawyer wanted to defend himself he could have appeared before the Court and put his defence before the Court. The defendants could have also joined the lawyer to this notice of motion as party so that he could submit explanation. The defendants have denied that opportunity to the lawyer, therefore, the allegations made against the lawyer cannot be accepted. If those allegations cannot be accepted, there is no special circumstance made out by the defendants to set aside the decree. The notice of motion is therefore, disposed of.

2. In my opinion, however, dismissal of this notice of motion will not be enough. In view of the conduct of the defendants of making such serious allegations against the lawyer in such a manner that the

lawyer does not get even an opportunity to explain his conduct calls imposition of exemplary cost on the defendants so that others are deterred from adopting similar course of action. The notice of motion is disposed of. The defendants are directed to pay as and by way of cost of this notice of motion Rs.15,000/- to the plaintiff.